



UNESCO house - Paris

WORLD CONGRESS ON JUSTICE FOR CHILDREN

28-30 MAY 2018

STRENGTHENING JUSTICE SYSTEMS FOR CHILDREN

Is life imprisonment ever appropriate for children who commit the most serious offences ?

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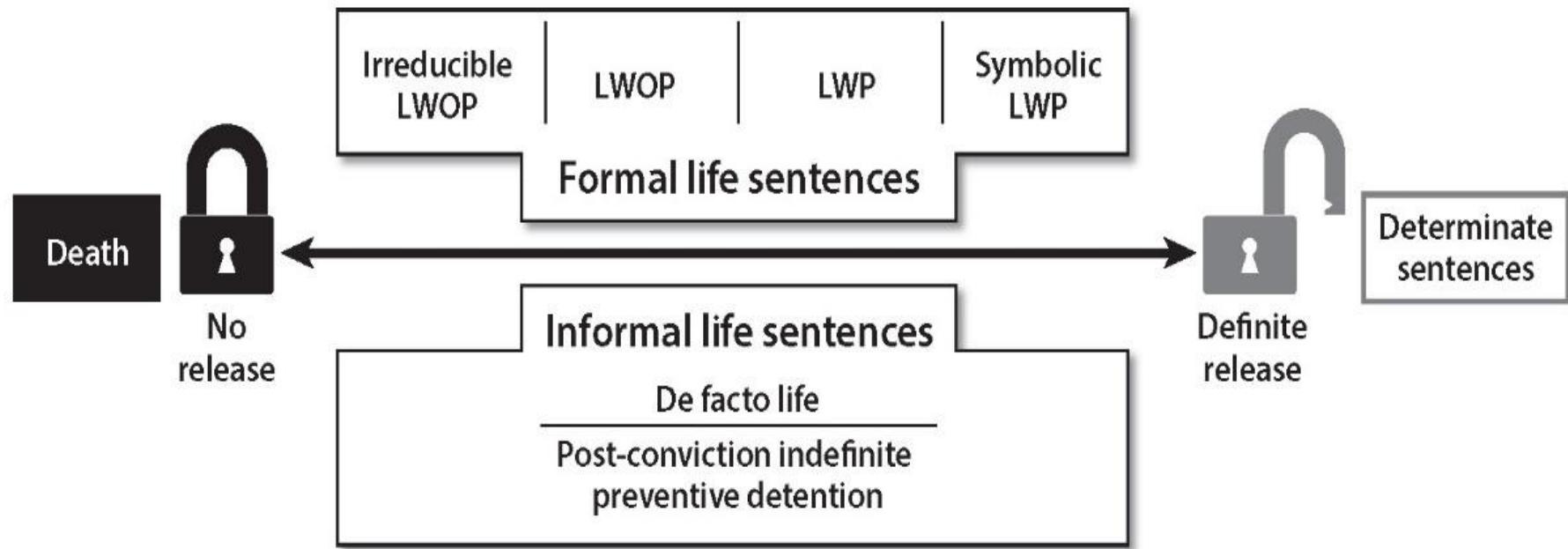


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The reason for the question: Facing the hardest cases

- Criminally responsible children sometimes commit very serious offences
- Such children may be very dangerous
- Deciding on how to deal with children who commit very serious offences is one of the greatest challenges facing child justice as the Convention on the Rights of the Child does not exclude imprisoning them – a residual criminal justice function remains
- In many, if not most, countries, as a matter of national law, some form of “life imprisonment”, although not always called that, may imposed on children.

What do we mean by life imprisonment?



'Life imprisonment is a sentence following a criminal conviction, which gives the state the power to detain a person in prison for life, that is, until they die there.'
(Van Zyl Smit and Appleton, forthcoming, 2018)

Which forms of life imprisonment for children are prohibited by international law?

- Article 37 of the Convention on the Rights of the Child requires all States Parties to ensure that:

*No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor **life imprisonment without possibility of release** shall be imposed for offences committed by persons below eighteen years of age.*

- Clear prohibition of LWOP
- Correctly enforced by the Human Rights Committee where life sentence is LWOP in fact if not in law.

Blessington and Matthew Elliot v. Australia, (2014).

Should all life imprisonment for children be abolished?

- Yes:
 - Committee on the Rights of the Child (2007)
 - Report of the UN Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (2015).
 - Inter-American Court of Human Rights, Case of *Mendoza and others v. Argentina* (2013).

Why do they support the abolition of all life imprisonment?

Given that:

- * Convention on the Rights of the Child outlaws only life imprisonment with no possibility of release.
- * What about the principle of **expressio unius est exclusio alterius** [the explicit mention of one (thing) is the exclusion of another] ?

Sleight of hand by the Committee on the Rights of the Child 2007?

No life imprisonment without parole (§ 77 of General | Comment 10)

No child who was under the age of 18 at the time he or she committed an offence should be sentenced to life without the possibility of release or parole. For all sentences imposed upon children the possibility of release should be realistic and regularly considered. . . .

The Committee reminds the States parties which do sentence children to life imprisonment with the possibility of release or parole that this sanction must fully comply with and strive for the realization of the aims of juvenile justice enshrined in article 40 (1) of CRC. This means that the child sentenced to this imprisonment should receive education, treatment, and care aiming release, reintegration and the ability to assume a constructive role in society. This also requires a regular review of the child's development and progress in order to decide on possible release.

Given the likelihood that a life imprisonment of a child will make it very difficult, if not impossible, to achieve the aims of juvenile justice despite the possibility of release, the Committee strongly recommends the States parties to abolish all forms of life sentence for offences committed by persons under the age of 18.

Others follow

- UN special rapporteur does not add empirical support to claims of Committee of the Rights of the Child.
- Inter-American Court in the *Mendoza* case does not interrogate Committee on the Rights of the Child assumptions “Given that....”

Can a case be made for outlawing some life sentences, other than LWOP, for children?

- Yes:
 - If the life sentence is imposed for a crime which is not sufficiently heinous and on an child offender who is not potentially highly dangerous (therefore no mandatory life sentences); **or**
 - if the minimum period before release is considered is too long to take into account the capacity of child to change in a shorter period; **or**
 - if child will not receive education, treatment, and care aimed at enabling him/her to assume a constructive role in society as required by the Convention on the Rights of the Child; **or**
 - the review after the minimum period is not sufficiently robust to ensure release after unless further detention is essential to protect the public against grave harm.

Examples of life sentences that could correctly be prohibited

- Case of *Mendoza and others v. Argentina* (2013).
 - Inter-American Court of Human Rights could have found against Argentina on the basis that the minimum period that all children sentenced to life imprisonment was inflexible unjustifiably long.
- Life imprisonment for children in South Africa
 - Mandatory minimum period too long
 - Insufficient treatment available

Example of possibly acceptable life sentence but too harsh in substance

- English case of **R v Fairweather**
- Child killed two people when aged 15, as part of deliberate admitted ambition to become a notorious serial killer.
- Arrested and convicted age 17 when preparing to kill third person
- given a mandatory life sentence (Called “detention during her Majesty’s pleasure” but judge explicitly says same as life sentence) with 27 minimum period before consideration of release
- **Why mandatory?**
- **Is 27 year minimum acceptable in terms of the Convention?**
- **Probably not**

Example where informal life sentence may be acceptable but not formal life sentence

- Germany: No formal life sentence for children but post conviction preventive detention (*Sicherungsverwahrung*) possible
- Norway: No formal life sentence for anyone but post-conviction preventive detention (*forvaring*)
- Both have advantages of flexibility treatment and due process.
- Safeguards necessary but are we sure we want to exclude them for all children?
- Concrete Norwegian example of *forvaring* for demonstrably dangerous 15 year old murderer.

Conclusion

- Convention on the Rights of the Child clear on what form of life imprisonment may never be imposed
- Committee on the Rights of the Child goes further on the basis of untested assumptions
- Better strategy would be to impose strict, Convention-based limits on the use of all types of life imprisonment for children but:
 - to leave the possibility open for it to be imposed in cases where the interests of the child and the protection of society require, and
 - to ensure that it implemented in a way that meets the requirement of the Convention.

Thank you!

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